

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *JE* D.C.  
05 OCT 24 AM 7:04

THOMAS H. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

ERIC J. FAIR,

Petitioner,

vs.

RICKY BELL,

Respondent.

X  
X  
X  
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X  
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X  
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X  
X

No. 05-2074-Ma/P

ORDER CORRECTING THE DOCKET  
ORDER DIRECTING CLERK TO MAIL AUGUST 29, 2005 ORDER  
TO PETITIONER'S CORRECT ADDRESS  
AND  
ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL

Petitioner Eric J. Fair, Tennessee Department of Correction prisoner number 229661, who is currently incarcerated at the Whiteville Correctional Facility in Whiteville, Tennessee,<sup>1</sup> filed a pro se petition pursuant to 28 U.S.C. § 2254 on January 28, 2005. Fair paid the habeas filing fee on February 1, 2005. The Court issued an order on June 15, 2005 that inter alia, dismissed the petition as time barred and denied a certificate of appealability. Judgment was entered on June 24, 2005. On July 15, 2005, Fair filed a notice of appeal, a motion for relief from

<sup>1</sup> As the petitioner notified the clerk of his change of address on August 3, 2005, the clerk is ORDERED to correct the docket to reflect that new address. The Court's direction to this effect in the August 29, 2005 order was ignored.

judgment pursuant to Fed. R. Civ. P. 60(b), and a motion seeking to hold his appeal in abeyance pending a decision on his Rule 60(b) motion. The Court issued an order on August 29, 2005 that denied the motions pursuant to Fed R. Civ. P. 60(b) and to hold the appeal in abeyance. Because the Clerk neglected to update the petitioner's address, his copy of the order was sent to his previous address. The Clerk is ORDERED to mail a copy of the August 29, 2005 order to the petitioner at his address of record forthwith.

On July 20, 2005, Fair filed a motion seeking in forma pauperis status on appeal. In its June 15, 2004 order, the Court certified, pursuant to Fed. R. App. P. 24(a), that an appeal would not be taken in good faith. 06/15/05 Order at 10-11. Accordingly, the petitioner is not entitled to proceed on appeal in forma pauperis even though he may be indigent. The petitioner was notified that, if he files a notice of appeal, "he must also pay the full \$255 appellate filing fee or file a motion to proceed in forma pauperis and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days." Id.

Because the Court has certified that an appeal would not be taken in good faith, the motion to proceed in forma pauperis is

DENIED. The Clerk is ORDERED to transmit a copy of the order to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED this 21<sup>st</sup> day of October, 2005.

A handwritten signature in black ink, appearing to read 'S. H. Mays, Jr.', with a long horizontal stroke extending to the right.

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SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 15 in case 2:05-CV-02074 was distributed by fax, mail, or direct printing on October 25, 2005 to the parties listed.

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Eric Fair  
RIVERBEND MAXIMUM SECURITY INSTITUTION  
229661  
7475 Cockrill Bend Road  
Nashville, TN 37209

Honorable Samuel Mays  
US DISTRICT COURT